**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH**

S.B. CRIMINAL MISC. PETITION NO.1721/07

Madan Lal Gupta **Versus** State

**DATE OF ORDER :: 06/12/2007**

**HON'BLE MR. JUSTICE AJAY RASTOGI**

Mr. Rinesh Gupta for Mr. Arvind Kumar Gupta, for petitioner
Mr. Arun Sharma, Public Prosecutor for State

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Instant petition has been filed by petitioner assailing order dated 7th September, 2007 whereby his right to cross-examine the prosecution witness, particularly, the complainant Guru Swaroop Talwar was closed on the premise that opportunity afforded to his counsel Mr. Rohitash Sharma who has shown his difficulty in cross-examination. Since counsel engaged by petitioner was out of station, learned trial Judge has not considered appropriate to grant one more opportunity to him to cross-examine prosecution witness.

Petitioner is facing trial for offence u/ss.120B, 409, 467, 468, 109 & 201 IPC along with other co-accused. It appears that statement of examination-in-chief of complainant was recorded on 28th February, 2007 and since it could not be completed on the said date, examination-in-chief further continued on 7th September, 2007

and thereafter, he was cross-examined by counsel of other co-accused Om Prakash, Kailash Chand Khandelwal and Bajranglal and so far as present accused-petitioner is concerned, it was recorded that since his counsel present on the said date Shri Rohitash Sharma has failed to cross-examine him, their opportunity to cross-examine was closed. It further appears from the order impugned that other prosecution witnesses have been summoned and their statements are yet to be recorded.

This fact cannot be ruled out that when persons come from outstation, their statement in chief and cross-examination must be recorded ordinarily on the same day which certainly facilitate the person who has come from outside to depose before the court. There might be some difficulty of his junior counsel to cross-examine the complainant whose cross-examination was recorded on behalf of other co-accused on the said date by the prosecution.

In the opinion of this court, if petitioner at this stage is not permitted to cross-examine, certainly, his right to cross-examine the witness will be defeated and right of cross-examination ordinarily should not be denied.

Consequently, the order dated 7th September, 2007 so far as closure of right to cross-examine defence witness of Guru Swaroop Talwar is concerned, is set aside and the learned trial Judge is directed to summon the witness and grant one opportunity to petitioner to cross-examine him and matter be proceeded further in accordance with law.

With the above observations, the misc. petition stands disposed of.

**[AJAY RASTOGI],J.**